

CAUSE NO. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT § IN THE DISTRICT COURT
FAIRNESS COALITION, et al; §
CALHOUN COUNTY ISD, et al; §
EDGEWOOD ISD, et al; §
FORT BEND ISD, et al; §
TEXAS CHARTER SCHOOL §
ASSOCIATION, et al. §
Plaintiffs §
§
§
§
§
JOYCE COLEMAN, et al §
Intervenors §
§
vs. § 200th JUDICIAL DISTRICT
§
MICHAEL WILLIAMS, COMMISSIONER §
OF EDUCATION, IN HIS OFFICIAL §
CAPACITY; SUSAN COMBS, §
TEXAS COMPTROLLER OF PUBLIC §
ACCOUNTS, IN HER OFFICIAL §
CAPACITY; TEXAS STATE BOARD §
OF EDUCATION, §
Defendants. § TRAVIS COUNTY, TEXAS

**DEFENDANTS' OBJECTION TO LACK OF FAIR NOTICE OF CHARTER
PLAINTIFFS LEGAL CLAIMS**

TO THE HONORABLE JOHN K. DIETZ, DISTRICT COURT JUDGE PRESIDING:

On January 28, 2013, Defendants objected to the testimony of the Charter Plaintiffs' witnesses that went beyond what was plead in their live, first-amended petition. The Court construed the objection as an untimely special exception and instructed the Defendants to file any such objections in writing. Pursuant to the Court's instruction, Defendants object as follows:

1. The Charter Plaintiffs legal claims, outlined throughout the body of their live petition, complain only about the purportedly arbitrary cap on charter schools in Texas, and the

lack of specifically-earmarked facilities funding for charter schools. Nowhere in the body of the petition do the Charter Plaintiffs contend, explain, or present facts supporting the argument that they are inadequately or inefficiently funded for operations or anything other than facilities.

2. The Charter Plaintiffs in their prayer for relief request the Court to declare that the school finance system is unconstitutionally unsuitable, inefficient and inadequate, just as every other plaintiff and the intervenors have done in this matter.
3. Texas Rule of Civil Procedure 47 outlines the duty of the party asserting claims for relief. The Rule requires that the petition “contain a short statement of the cause of action sufficient to give fair notice of the claim involved.” Tex. R. Civ. P. 47(a)
4. The Rule separately sets out that the party asserting claims for relief must also make a demand for judgment. *Id.* 47(c).
5. Rule 67 contemplates that issues not raised in the pleadings may be tried by consent.
6. Unpleaded claims or defenses that are tried by express or implied consent of the parties are treated as if they had been raised by the pleadings. *Roark v. Stallworth Oil and Gas, Inc.* 813 S.W.2d 492, 495 (Tex. 1991) (citing *Bednarz v. State*, 142 Tex. 138, 176 S.W.2d 562, 563 (1944); *Watts v. St. Mary's Hall, Inc.*, 662 S.W.2d 55, 58 (Tex. App.—San Antonio 1983, writ ref'd n.r.e.)). A party who allows an issue to be tried by consent and who fails to raise the lack of a pleading before submission of the case waives any issues of pleading deficiency on appeal. *Id.* (citing *Harrington v. Aetna Casualty & Sur. Co.*, 489 S.W.2d 171, 178 (Tex. Civ. App.—Waco 1972, writ ref'd n.r.e.); *Pleasant Grove Builders, Inc. v. Phillips*, 355 S.W.2d 818, 822 (Tex. Civ. App.—Dallas 1962, writ ref'd n.r.e.)).

7. Pursuant to Texas Rules of Civil Procedure 47 and 67, Defendants object that they did not have fair notice of Plaintiffs claims that the school finance system as applied to charter schools is inadequate, inefficient or unsuitable beyond their claims regarding facilities funding.
8. Their legal claims make no mention of inadequacy, unsuitability, or inefficiency of operations funding. And although their prayer seeks a judgment that the system is constitutionally deficient with respect to charter schools, that broad request for relief is insufficient to give any context, definition, or notice to Defendants of the particular nature of Charter Plaintiffs claims.

PRAYER

Based on the foregoing, Defendants respectfully object to the Charter Plaintiffs live, first amended petition as not providing them fair notice of any claims regarding the inadequacy, inefficiency or unsuitability of funding for operations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2013, I forwarded the foregoing document to all known counsel of record via email and by uploading to an FTP secure site:

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ORDER

On this day came on to be considered Defendant's Objections to Lack of Fair Notice of Charter Plaintiffs Legal Claims in their live first amended petition and the Court after considering same is of the opinion it should be:

GRANTED: _____ DENIED: _____

Signed this the _____ day of January, 2013.

JUDGE JOHN K. DIETZ
District Judge Presiding